

# **EXHIBIT A**

Plaintiffs' Groupings	Drug Name	Plaintiffs' Groupings	Drug Name
ABBOTT	Adenopsine	BAYER	Dexamethasone acetate (Bayer does not manufacture or distribute this drug)
ABBOTT	Bupivacaine	BAYER	Moxifloxacin Injectable (Avelox)
ABBOTT	Ciprofloxacin Hydrochloride	FUJISAWA GROUP	Adenosine
ABBOTT	Dexamethasone Acetate	FUJISAWA GROUP	Methylsulfate
ABBOTT	Diltiazem Hydrochloride Inj		
ABBOTT	Dopamine Hydrochloride		
ABBOTT	Enalaprilat Inj	PFIZER	Bacitracin
ABBOTT	Epinephrine	PFIZER	Cytoxan
ABBOTT	Famotidine	PFIZER	Depo-Provera
ABBOTT	Glycopyrrolate	PFIZER	Diphenhydramine Inj
ABBOTT	Hydromorphone Inj	PFIZER	Doxycycline
ABBOTT	Ketorolac	PFIZER	Epirubicin
ABBOTT	Labetalol Inj	PFIZER	Heparin Sodium
ABBOTT	Lavofloxacin	PFIZER	Hydrocortisone Sodium Succinate
ABBOTT	Lidocaine Hydrochloride	PFIZER	Potassium Chloride
ABBOTT	Magnesium Sulfate	PFIZER	Propofol Injectable
ABBOTT	Midazolam Hydrochloride	PFIZER	Triptoreline Pamoate
ABBOTT	Morphine Sulfate Inj		
ABBOTT	Potassium Chloride	PHARMACIA GROUP	Cytoxan
ABBOTT	Promethazine Inj	PHARMACIA GROUP	Diphenhydramine Injectable
ABBOTT	Propofol Injectable	PHARMACIA GROUP	Epirubicin
ABBOTT	Ringer's Lactated with Dextrose Inj	PHARMACIA GROUP	Etoposide Phosphate
ABBOTT	Succinylcholine Chloride Inj	PHARMACIA GROUP	Heparin Sodium
ABBOTT	Vercuronium Bromide	PHARMACIA GROUP	Hydrocortisone Sodium Succinate
		PHARMACIA GROUP	Triptoreline Pamoate
AVENTIS GROUP	Albumin		
AVENTIS GROUP	Eligard	SICOR GROUP	Cisplatin
AVENTIS GROUP	Enoxaparin Sodium	SICOR GROUP	Dexamethasone Sodium Phosphate
AVENTIS GROUP	Furosemide	SICOR GROUP	Diltiazem Hydrochloride Injectable
AVENTIS GROUP	Sodium Chloride	SICOR GROUP	Epinephrine
		SICOR GROUP	Enalaprilat Injectable
BAXTER	Carboplatin	SICOR GROUP	Glycopyrrolate Injectable
BAXTER	Cefazolin	SICOR GROUP	Magnesium Sulfate Injectable
BAXTER	Cefazolin Sodium	SICOR GROUP	Neostigmine Methylsulfate
BAXTER	Cefuroxime	SICOR GROUP	Phenylephrine
BAXTER	Ciprofloxacin Hydrochloride	SICOR GROUP	Promethazine Injectable
BAXTER	Dexamethasone Sodium Phosphate	SICOR GROUP	Propofol Injectable
BAXTER	Diazepam	SICOR GROUP	Sodium Chloride
BAXTER	Diltiazem Hydrochloride	SICOR GROUP	Vercuronium Bromide Injectable
BAXTER	Diphenhydramine	SICOR GROUP	Vincristine Sulfate
BAXTER	Dopamine Hydrochloride		
BAXTER	Enalaprilat	WATSON	Lorazepam Injectable
BAXTER	Famotidine	WATSON	Ketorolac Tablets
BAXTER	Fentanyl Citrate	WATSON	Promoethazine
BAXTER	Furosemide	WATSON	Trelstar
BAXTER	Gentamicin Sulfate		
BAXTER	Glycopyrrolate		
BAXTER	Hetastarch Sodium Chloride		
BAXTER	Hydromorphone Injectable		
BAXTER	Ketorolac Tromethamine		
BAXTER	Labetalol Injectable		
BAXTER	Lidocaine Hydrochloride		
BAXTER	Methotrexate Sodium		
BAXTER	Midazolam		
BAXTER	Midazolam Hydrochloride		
BAXTER	Neostigmine Methylsulfate		
BAXTER	Phenylephrine		
BAXTER	Potassium Chloride		
BAXTER	Promethazine		
BAXTER	Ringers Lactated With Dextrose Injectable		
BAXTER	Propofol		
BAXTER	Vancomycin Sulfate		
BAXTER	Vercuronium Bromide		

# **EXHIBIT B**



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August 9, 2006

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**By E-Mail and Facsimile**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

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**Re: In re Pharmaceutical Industry Average Wholesale Price Litigation  
MDL 1456**

Dear Steve:

We are writing in response to your purported 93A demand letter to Aventis Pharmaceuticals Inc. (“Aventis”) dated July 10, 2006. From the outset, we note that by responding to your letter we are not acknowledging the sufficiency of your demand letter, nor are we waiving any of the requirements or defenses of M.G.L. ch. 93A sec. 9.

As you are aware, Aventis filed a Motion for Summary Judgment and Judgment on the Pleadings (“Motion for Summary Judgment”) on the grounds that plaintiffs failed to comply with the clear requirements of M.G.L. ch. 93A. In response to our Motion for Summary Judgment, you filed an Opposition and Motion for Leave to File an Amended Complaint (“Motion for Leave”). We have opposed your Motion for Leave on the grounds that your proposed amendment would be futile (the “Opposition to Motion for Leave”).

The provisions of M.G.L. ch. 93A sec. 9 are clear—an M.G.L. ch. 93A sec. 9 demand letter must be sent thirty days before filing suit.

[a]t least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent.

M.G.L. ch. 93A sec. 9(3) (emphasis added). You are aware, and have in fact acknowledged, that plaintiffs failed to comply with the law. As you and your local Massachusetts colleagues are familiar with Massachusetts law, you should know that the demand letter requirement of section 9 is jurisdictional and the failure to comply with the requirement is fatal to the claim. See Thorpe v. Mutual of Omaha Ins. Co., 984 F.2d 541, 543-44 (1st Cir. 1993); Linton v. New



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York Life Ins. and Annuity Corp., 392 F. Supp. 2d 39, 42 (D. Mass. 2005); McMahon v. Digital Equipment Corp., 944 F. Supp. 70, 76 (D. Mass. 1996); City of Boston v. Aetna Life Ins. Co., 399 Mass. 569, 574 (1987); Spring v. Geriatric Authority of Holyoke, 394 Mass. 274, 285 (1985); Wall v. Altenhof, No. 99-P-1542, 2003 WL 18757630, at \*3 (Mass. App. Ct. Apr. 10, 2003); Spilios v. Cohen, 38 Mass. App. Ct. 338, 342-43 (1995).

In addition to not complying with the statute's jurisdictional prerequisite that a demand letter be sent thirty days prior to bringing suit, your attempted 93A demand falls woefully short of the substantive requirements for 93A demand letters. While the letter states that it is sent on behalf of "all classes in the litigation," no "class" exists as to Aventis. As you are aware, Baldassari v. Public Finance Trust, 369 Mass. 33 (1975) held that at least one putative class representative must provide a proper, pre-suit demand letter "identifying him as the claimant and reasonably describing the act or practice relied on and the injury suffered by him." Baldassari, 369 Mass. at 42. None of the named consumer plaintiffs have ever provided a pre-suit demand letter under chapter 93A, nor does your belated purported demand letter identify "the claimant." M.G.L. ch. 93A sec. 9(3). Indeed, there is no named Massachusetts plaintiff for whom such a demand letter could be provided.

In light of the government reports, testimony, and other information we have brought to your attention since you filed this lawsuit, we are also surprised that you continue to pursue your AWP claim. As you know, your initial complaint said that Average Wholesale Price or "AWP" was intended to be a literal term; an actual average of wholesale prices. We brought to your attention the testimony of Mr. Pennebaker, who testified that the term "AWP" was invented in 1969 by State of California pharmacists who were responsible for reimbursing providers for prescription medicines under California's Medicaid program. We also provided you with government reports and articles stating that AWP is a term of art and merely a pricing benchmark invented by government officials, and later used by private payors, to reimburse for prescription medicines. These same articles also say that, at least since the 1990s, the term AWP has been commonly characterized by government officials and other knowledgeable persons in the healthcare industry as "Ain't What's Paid."

After considering this information, you changed your theory in your complaint that AWP was a literal term, to yet another unfounded theory – that the term AWP was a pricing "signal," which everyone in the industry allegedly viewed as representing a price fixed at 30% above yet another pricing term, Wholesale Acquisition Cost or "WAC." We then provided you with additional information, testimony, and reports demonstrating that this fallback theory was as incorrect as your first.

In addition, we've also informed you that Aventis does not establish the AWP for its medicines, nor does it "inflate" the AWP for these medicines. As the testimony of our employees and



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company documents we have given you make clear, since 2001 Aventis has provided to the independent pricing companies a Wholesale List Price only, which Aventis has told the pricing companies “does not include discounts, rebates, charge-backs, or other terms or distribution arrangements that may reduce actual sales price.” As you also know, since you have filed a separate lawsuit against them, pricing companies unilaterally set the AWP for prescription medicines, which they then publish and sell to their subscribers. In fact, you allege in your separate lawsuit against these pricing companies that this conduct subjects them to liability because you allege that the pricing companies “inflated” the AWP pricing benchmark. Even before 2001, when Aventis suggested an AWP to the pricing companies, all such suggestions followed industry standard mark-ups of 20-25%.

Finally, we’ve also demonstrated that Aventis followed a formula that insured that its weighted average price increases for its medicines did not exceed the Consumer Price Index (“CPI”). The list price increases for Anzemet® and Taxotere® were also consistent with those that Aventis made for the remainder of medicines. With regard to Anzemet®, after taking a series of modest price increases (4% to 6% annually) between 1999 and 2001, Aventis made no pricing changes from 2001 through mid-2004, at which time it *lowered* the list price. Taxotere® followed a similar pricing pattern, averaging annual 5% price increases from 1997 through 2003.

In sum, we assert that your purported demand letter is both untimely and insufficient, reject your request to cure alleged violations and stand by the arguments set forth in our Motion for Summary Judgment and Opposition to your Motion for Leave to File an Amended Complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael DeMarco', with a long horizontal flourish extending to the right.

Michael DeMarco

cc: Thomas M. Sobol, Esq. (By Certified Mail, E-Mail and Facsimile)  
All Counsel of Record (via LexisNexis)